

MADISON COUNTY BOARD OF ZONING APPEALS

IN THE MATTER OF PETITION 2019-V-006
BY LONE OAK SOLAR ENERGY, LLC



AMENDED ORDER TO CORRECT SCRIVENER'S ERROR

Comes now the Madison County Board of Zoning Appeals ("BZA"), and after receiving written and oral evidence at a April 23, 2019 hearing, as well as the continuation of that hearing on both May 16, 2019 and May 28, 2019, now states the following:

1. Board Members Don Pine, Beth Vansickle, Jerry Stamm, and Vice Chair John Simmermon were present during the April 23, 2019 hearing, as well as both continuations thereof. Chair Mary Jane Baker did not participate or attend the hearing.
2. After considering all oral and written evidence, the BZA hereby, pursuant to a 4-0 vote, APPROVES 2019-V-005 submitted by Petitioner Lone Oak Solar Energy, LLC.
3. The BZA hereby adopts the Findings of Fact for Variances contained in the May 28, 2019 Staff Report of the Madison County Board of Zoning Appeals, which is attached hereto as Exhibit "A."
4. The BZA's adoption of the Findings of Fact for Special Use are contingent on the Board's Conditions for Adoption of Findings of Fact, which are attached hereto as Exhibit "B."

SO APPROVED ON THE 28TH DAY OF MAY, 2019

/s/ JOHN SIMMERMON

JOHN SIMMERMON, VICE CHAIR

MADISON COUNTY BOARD OF ZONING APPEALS

This Amended Order is issued to correct a Scrivener's error contained in Condition #7 of the "Conditions for Adoption of Findings of Fact", which erroneously included the phrase "... , as described in Condition #2 herein. . ."

STAFF REPORT
MADISON COUNTY BOARD OF ZONING APPEALS
May 28, 2019
Petition 2019-V-006
Updated: May 24, 2019

Case Number: 2019-V-006

Address: N/A

Parcel(s): 48-05-08-100-006.000-025, 48-05-08-200-001.000-025, 48-05-08-300-001.000-025, 48-05-08-400-001.000-025, 48-05-08-400-003.000-025, 48-05-08-600-001.000-025, 48-05-09-200-004.000-021, 48-05-09-200-005.000-021, 48-05-09-200-006.000-021, 48-05-09-300-002.000-021, 48-05-09-300-004.000-021, 48-05-17-100-028.000-025, 48-05-17-200-007.000-025, 48-05-17-300-001.000-025, 48-05-17-300-004.000-025, 48-05-17-300-005.000-025, 48-05-17-400-001.000-025, 48-05-17-400-002.000-025, 48-05-17-400-003.000-025, 48-05-17-400-007.000-025, 48-05-17-400-014.000-025, 48-05-17-400-015.000-025, 48-05-17-400-018.000-025, 48-05-17-400-019.000-025, 48-05-19-100-001.000-025, 48-05-19-100-005.000-025, 48-05-19-300-002.000-025, 48-05-19-300-011.000-025, 48-05-19-400-002.000-025, 48-05-19-400-003.000-025, 48-05-19-400-004.000-025, 48-05-19-400-007.000-025, 48-05-19-400-009.000-025, 48-05-20-100-001.000-025, 48-05-20-300-003.000-025

Township: Pipe Creek Township and Monroe Township

Commissioner: North District Commissioner

Location: Multiple locations between West 1000 North and West 1300 North (north to south) and North 350 West and North 600 West (east to west) – please see the Site Plan for precise locations

Owner(s): Dianna Etchison, Dan Etchison, Denise Etchison, Barber Family Farms Inc., Barber Livestock Farms Inc., Helser Family Share Trust dated January 19, 2017, John W Richwine Farms Inc, Benjamin Lloyd Richwine Farms Inc, Cindy Pruitt, Shirley Reason, Leota Brown, Patricia Shrock, Tony Barber, Judy Bailey, Don & Judy Bailey Farms Inc., Gary Reichart, Myron Wittkamper, Ray & Tamara Utterback, Virgil & Kaya Canfield, Justin D. Fisher, Mitchell L Cain, Robert L. Cain, Linda L. Cain

Petitioner: Lone Oak solar Energy, LLC, c/o Katya Samoteskul

Zoning: Agriculture (AG)

Request: A Variance to increase the Special Use request to more than three (3) years.

Notices: 150 Notices mailed out by April 12, 2019

STAFF REPORT
MADISON COUNTY BOARD OF ZONING APPEALS
May 28, 2019
Petition 2019-V-006
Updated: May 24, 2019

SUMMARY:

SITE, PETITIONER, and PROPOSAL INFORMATION

- ◊ The petitioner is Lone Oak Solar Energy, LLC which is a Delaware Limited Liability Company authorized to do business in Indiana. Lone Oak Solar Energy, LLC is a wholly-owned subsidiary of Invenergy.
- ◊ Invenergy develops, builds, owns and operates large-scale energy facilities across four core technologies (wind, natural gas, solar, battery storage). Invenergy has developed 125 large-scale projects totaling more than 20,000 MW.
- ◊ Lone Oak Solar Energy, LLC will develop, design, permit construct and operate the project and sell the electrical output to customers pursuant to one or more agreements. Alternatively, Invenergy will sell some or all of the project to one or more public utilities, and will remain as the builder and operator of the project.
- ◊ The proposed project will be located on 35 different parcels with a total of 23 different property owners. All 35 properties are zoned Agriculture (AG).
- ◊ The total acreage of the 35 parcels involved in the project is 1332.689 acres. The project will be built on approximately 860 acres of land that is leased out of the 1332.689 acres.
- ◊ The request is to extend the Large Scale Solar Farm Special Use to more than three (3) years (specified time request to be determined at BZA hearing)

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LAND USE & DEVELOPMENT CODE

- ◊ Article 3.4 "Agriculture District" of the Land Use and Development Code states that the minimum side yard setback is 25 feet and the minimum rear yard setback is 30 feet.
- ◊ Article 6.29, SE-02 (A) "Solar Energy System Standards" of the Land Use and Development Code states that the "... Special Use shall be null and void if construction has not begun within three (3) years of the approval date, and an extension of the Special Use has not been approved."
- ◊ Article 11.9 - C ("Development Standards Variances") of the Land Use and Development Code states that the "... Board may require the owner of the property to make written commitments concerning the use of development of the property ... and have such commitments recorded ..."

THOROUGHFARE PLAN

- ◊ The Madison County Thoroughfare Plan defines West 1300 North as a Local Road, State Road 28 as an Arterial Road, West 1100 North as a Collector Road, West 1000 North as a Local Road, North 350 West as a Local Road, North 400 West as a Local Road, North 450 West as a Local Road, North 500 West as a Collector Road, North 550 West as a Local Road, and North 600 West as a Local Road. Arterial Roads are to have a one-hundred (100) foot right-of-way measured fifty (50) feet from the center of the road. Collector Roads are to have eighty (80) foot right-of-way measured forty (40) feet from the center of the road. Local Roads are to have sixty (60) foot right-of-way measured thirty (30) feet from the center of the road.

ZONING CLASSIFICATION

- ◊ All 35 parcels in the proposed project area are zoned Agriculture (AG). The Ag One, LLC property, located on the east side of North 400 West, approximately ½ mile north of West 1100 North is zoned General Industrial (GI). Parcels in and around the Town of Dundee (as indicated on the attached map) is zoned Conservation

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Residential (CR). All other parcels surrounding the proposed project, and within the specified location of the area required to receive notice, are zoned Agriculture (AG).

- ◊ The proposed project area and the surrounding adjacent parcels have a mixed use of agriculture and residential, with one industrial use.

RECOMMENDATION

- ◊ Staff recommends approval of the Variance.

FINDINGS of FACT for VARIANCES

1. *Will the approval be injurious to the public health, safety, morals, and general welfare of the community?*

No. There is no convincing evidence that exists suggesting that an extension of the three (3) year time limit to initiate the project would cause injury or have an adverse effect on the public health, safety, morals and general welfare. A project given an indefinite time to be initiate would injure the public by the uncertainty it would create. A definitively defined time should be established and should not exceed 5 years.

2. *Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?*

An extension beyond 3 years that is definitively defined will not create a reduction in value, particularly with the attached conditions.

3. *Will the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property?*

Yes. The proposed project has multiple variables and very complex, requiring significant planning and coordination with multiple entities affiliated with the project after the approval of a Special Use and the variance requests. The Madison County Land Use and Development Plan does not contemplate such a large, complex project.

*For pictures, please view Petition 2019-SU-001.
BAN

**MADISON COUNTY BOARD OF ZONING APPEALS
CONDITIONS FOR ADOPTION OF FINDINGS OF FACT,
AMENDED TO CORRECT SCRIVENER'S ERROR
2019-SU-001, 2019-V-005, 2019-V-006**

May 28, 2019

The Madison County Board of Zoning Appeals ("BZA") requires the following conditions for the approval of 2019-SU-001, 2019-V-005, and 2019-V-006, and the findings of fact by contained therein are contingent on the below listed conditions:

1. Except as noted below, Petitioner shall comply with all terms of the Decommissioning Plan Agreement as submitted to the case file.
2. No solar panel shall be located closer than 500 feet from an existing non-participating residential structure or closer than 200 feet from the property line of a non-participating owner; provided, however, that solar panels may be located no closer than 250 feet from a non-participating residential structure or closer than 100 feet from a non-participating owner's property line only if (a) a non-participating owner consents, in writing, to the placement of solar panels no closer than 250 feet from that owner's residential structure or no closer than 100 feet from a non-participating owner's property line; and, (b) the written consent described herein is recorded with the Madison County Recorder's office, with a copy of the recorded instrument provided to the Madison County Planning Department and Madison County Plan Commission. Notwithstanding the above, all solar panels shall meet the Madison County setback requirements of (i) 25 feet from side yards, (ii) 30 feet from rear yards, (iii) 150 feet from arterial roads, (iv) 100 feet from collector roads; and (v) 25 feet from local roads.
3. Landscaping shall be installed in compliance with the Petitioner submitted Lone Oak Solar Landscape Plan dated April 18, 2019 ("Landscape Plan"), with the exception that, when requested by a non-participating abutting landowner with a sight line to a solar panel in question, evergreen trees or vegetation shall be installed in place of the vegetation specified in the Landscape Plan.
4. For repair of drainage infrastructure or systems damages by any cause connected with the Project, Petitioner shall restore the drainage infrastructure or system to pre-existing conditions or better within a period of three (3) months after receipt of notice of such damage, unless such repair is rendered impractical by weather or other natural force. Petitioners shall be responsible for all expenses related to repairs, relocations, reconfigurations, and replacements of drainage infrastructure and systems that are damaged as a direct result of the Project. Petitioner shall post a "5A" surety bond in an amount to be determined by the Madison County Drainage Board ("Drainage Board"), payable to the Drainage Board to address any need for drainage tile repair, replacement or re-routing caused by construction activities or installation of the Project, such bond to be posted within 45 days after commencement of Project commercial operations

date and to remain in effect for a period of five (5) years thereafter. The Drainage Board shall determine and adjudicate whether claims brought by an adjacent property owner for damage to drainage tile directly result from the project based on substantial evidence.

5. Petitioner shall fully comply with Indiana Code requirements regarding legal drains except as otherwise approved by the Drainage Board and any other necessary bodies, including, but not limited to, the Storm Water Management Ordinance.

6. Petitioner shall provide equipment specifications for the solar energy system to the Madison County Planning Executive Director prior to the issuance of Improvement Location Permits for the final site design and construction of the Project.

7. Petitioner shall not construct any additional phases or expand the Loan Oak Solar Project anywhere in Madison County, with the sole exception of expansion provided for by agreement of non-participating owners, as described herein, provided, however, that the overall power capacity of the Project shall not exceed the power capacity as described in Petitioner's initial petition contained in the case file.

8. Petitioner shall repair documented damages to County roads damaged during construction or operations to the pre-construction condition pursuant to the direction of the Madison County Highway Superintendent. Petitioner shall post a "5A" surety bond in an amount to be determined by the Madison County Board of Commissioners to address said repairs.

9. Unless otherwise stated in these conditions, Petitioner shall comply with the terms of the Property Operation and Maintenance Plan as submitted to the case file.

10. Upon completion of construction of the Project, a representative from the Operator shall conduct, at Operator's expense, annual training and drills with local emergency responders.

11. Petitioner shall pursue an agreement with the Drainage Board and Madison County Surveyor ("Surveyor"). Petitioner shall comply with the reasonable direction of the Surveyor regarding (a) retention at Petitioner's sole expense of an appropriate inspector, including a "not to exceed" budget; (b) notification to the Surveyor when all drainage improvements and work within the public right-of-way have been completed and inspected by the inspector; and (c) timeline and process for repair of any damage caused by the Project.

12. Prior to initiating construction, petitioner will engage an independent third party to develop a groundwater monitoring program within the fence line of the Project, which will include, but not be limited to, establishment of baseline levels for constituents of concern and monitoring every two (2) years for the life of the Project. The results of the monitoring program may be shared with land owners as required by the operative Lease and Easement Agreements and shall be provided to any necessary government agencies as required by law.

13. Prior to the issuance of an Improvement Location Permit, Petitioner shall provide the Executive Director a topographic and hydrology study of the Project site.

14. Noise levels produced by the Project under normal operating conditions shall, in no event, exceed 45dB(A) L_{eq} (1 hour) at occupied residences of non-participating land owners.

15. No lighting will be installed or operated on the Project site other than as needed for 1) security lighting at the Project gate(s), 2) emergency lighting at inverters and substations as needed and otherwise in the Project area for emergency responses, 3) within the substation footprint, 4) inspection/repair purposes, 5) internal, external, and down lighting of the O&M building, and 6) as otherwise required by applicable law.

16. Petitioner shall post a "5A" surety bond, in an amount no less than \$5,608,003, the estimated cost of decommissioning the project as provided by Petitioner's Decommissioning Plan (See Section 4.1, Table 3), payable to the Madison County Plan Commission, for possible decommissioning costs. The estimated cost of decommissioning the project shall be reevaluated every three (3) years, with the amount of the surety payable to the Madison County Plan Commission adjusted as necessary to fully secure the Plan Commission for the full estimated cost of decommissioning.

17. All required fencing will be 6' chain link fence with barbed wire utilized where appropriate.

18. The Project shall be complete and operational on or before December 31, 2023.

ADOPTED THIS 28th DAY OF MAY, 2019.

MADISON COUNTY BOARD OF ZONING APPEALS

/s/ John Simmermon

JOHN SIMMERMON, VICE CHAIR

MADISON COUNTY PLANNING COMMISSION
16 E 9th Street, Box 13, Anderson, IN 46016
Ph: (765) 641-9541 Fax: (765) 648-1361
www.madisoncounty.in.gov

NO PARTIAL FILINGS WILL BE ACCEPTED

For Office Use Only
Case #: 19-V-001
Hearing Date: _____
Date fee paid: _____
Receipt #: _____
Approved _____ Denied _____

VARIANCE FROM DEVELOPMENT STANDARDS

Property Owner Owner name: <u>Multiple (see property owners list)</u> Address: _____ Phone no(s): _____	Petitioner Information Petitioner name: <u>Lone Oak Solar Energy, LLC</u> <u>c/o Katya Samoteskul</u> Address: <u>One South Wacker Drive, Ste. 1800</u> <u>Chicago, IL 60606</u> Phone no(s): <u>312-582-1729</u> <u>ksamoteskul@loneoakenergy.com</u>
Attorney/Contact Person and Project Engineer (if any) Name: <u>Mary E. Solada, Esq.</u> <u>Bingham Greenebaum Doll LLP</u> Address: <u>10 West Market Street, Ste. 2700</u> <u>Indianapolis, IN 46204</u> Phone no(s): <u>317-635-8900</u> <u>msolada@bgdlegal.com</u>	Name: _____ Address: _____ Phone: _____

Attachments <input type="checkbox"/> Completed Application <input type="checkbox"/> Copy of Most Current Deed with Legal Description <input type="checkbox"/> Letter of Intent <input type="checkbox"/> Site plan-drawn to scale (10 copies on 11x17 Paper) <input type="checkbox"/> Application Fee	CRITERIA 1. Will the approval be injurious to the public health, safety, morals, and general welfare of the community? 2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? 3. Will the strict application of the terms of the zoning ordinance result in a practical difficulty in the use of the property?
For Office Use Only <input type="checkbox"/> Notice of Public Hearing <input type="checkbox"/> Affidavit of Publication of Legal Notice <input type="checkbox"/> Affidavit of Notice to Interested Parties	

Project Information Township & Section: <u>Pipe Creek & Monroe Townships - Multiple Sections (see property owners list)</u> Acreage or lot size: <u>approximately 900 acres</u> Address/location: <u>Multiple (see property owners list)</u> Current zoning: <u>Agriculture</u> Current Use <u>Agricultural</u> Nature of variance/special use/appeal: <u>Solar Farm with panels located near and over multiple property lines deviating from building setbacks per the site plan. Additionally, petitioner requests to deviate from the requirement to begin construction within 3 years.</u>	Parcel #: <u>Multiple (see property owners list)</u>
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The undersigned states the above information is true and correct as (s)he is informed and believes.

Signature of Applicant:

Jonathan Saxon, Vice President, Renewable Development
Lone Oak Solar Energy LLC

Date: 03/19/2019

State of Illinois
County of Cook

SS: Subscribed and sworn to before me this 19th day of March, 2019.

Ruth M. Nadolny
Notary Public

Ruth M. Nadolny
Printed Name

Residing in Cook County, IL My Commission expires: 3-8-2021



Invenergy

One South Wacker Drive | Suite 1800 | Chicago, Illinois 60606
T 312-224-1400 | F 312-224-1444

General Project Location and Description of Project and Project Area

1.1 Project Location

The proposed Project is located in northwestern Madison County, Indiana, in Monroe and Pipe Creek Townships and between the Towns of Elwood and Alexandria. The Project spans north-south from 1000N to 1300N, and east-west from 350W to 600W.

1.2 Size of Project Area in acres

The Project will be built on approximately 850-900 acres of leased land within an approximately 1,890-acre Project Area boundary.

1.3 Project Size (rated capacity), in megawatts

The Project is a solar photovoltaic (PV) electric generation facility and will have an installed capacity of up to 120 MWAC. Power is generated by the panels as direct current (DC). DC power is then converted to alternating current (AC) by inverters. Total power production by the panels may be up to 158 MWDC (direct current).

Solar PV panels (modules) produced by a wide range of manufacturers are under consideration for the Project, including Canadian Solar, First Solar, Hanwha Qcells, JA Solar, Jinko, Longi, Risen, SunPower, and Trina. The Project will analyze current market offerings to make a final selection on specific solar module, inverter and racking system equipment. These panels have approximately 385-445 watts (W) of DC power output individually.

1.4 Components of the Proposed Solar Project

The main components of the Project include:

- Solar PV panels
- Racking to fasten and support the panels
- Tracking system

Invenergy

- Transformers and inverters
- Foundations and steel piles
- Electrical cabling and conduits
- Perimeter fencing, site access and internal roads

1.5 Project Ownership

Invenergy develops, builds, owns and operates large-scale energy facilities across four core technologies: wind (93 projects; 13,328 MW), natural gas (11 projects; 5,641 MW), solar (26 projects; 2,750 MW), and battery storage (5 projects; 69 MW). Invenergy projects are mainly located in the United States, with other projects located in Japan, Poland, Scotland, and Uruguay. Invenergy has a proven development track record of 125 large-scale projects developed totaling more than 20,000 MW.

Lone Oak Solar Energy LLC (Lone Oak) is a Delaware Limited Liability Company authorized to do business in Indiana. Lone Oak is a wholly-owned subsidiary of Invenergy.

Lone Oak will develop, design, permit, construct and operate the Project and sell the electrical output of the Project to customers pursuant to one or more agreements. Alternatively, Invenergy will sell some or all of the Project to one or more public utilities, with Invenergy remaining as the builder and operator of the Project.

